

REMARKS/ARGUMENTS

Claims 7, 8, 34, 41, 42 and 43 were rejected under 35 U.S.C. 112 second paragraph, as allegedly being indefinite. These claims have been canceled to render this rejection moot.

Claims 1, 2, 7, 8, 24, 25, 30, 31 and 33-47 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Appleton (US 3,654,668). Applicants have canceled these claims and added claims 48-59 to expedite prosecution. Appleton discloses a wrapping device with "first and second legs" located on opposite ends of the *same side* of the planar body. Applicant's invention describes first and second legs on *opposite sides* of the planar body. Accordingly, Appleton does not describe at least two of the elements recited in, for example, Claims 48 and 55 listed below (*emphasis added*).

48. (New) An implant to be implanted between adjacent first and second spinous processes, the implant comprising:

 a planar unitary body having a first end, a second end, and opposed sides extending therebetween;

a first leg extending from the first end along the *second side*;

a second leg extending from the second end along the *first side*;

 a first saddle disposed at the first end between the first leg and the first side so as to receive the first spinous process when the implant is implanted;

 a second saddle disposed at the second end between the second leg and the second side so as to receive the second spinous process when implanted;

 a first fastener coupled with the first saddle so as to secure the first spinous process to the first saddle;

 a second fastener coupled with the second saddle so as to secure the second spinous process to the second saddle.

55. (New) An interspinous process implant comprising:
a unitary central planar body with first and second saddles *located on
opposite sides of the planar body* and configured to receive adjacent spinous
processes, the interspinous process implant having at least one tether secured to at
least one saddle so as to retain the interspinous process implant between the
interspinous processes and maintain separation between the interspinous processes.

Furthermore, Appleton does not recite a *fastener to retain the first spinous
process in the first saddle and a second spinous process in the second saddle* nor is there any
means to separate the spinous processes. In fact, Appleton describes how to bundle like items
together not how to bind different items to separate them. See independent Claims 52 and 57
below (*emphasis added*).

52. (New) An implant for use as an interspinous process implant between
a first spinous process and a second spinous process, the implant comprising:
planar unitary body having a first end that defines a first saddle and a
second end that defines a second saddle;
*a first tether coupleable with the first saddle so as to surround the first
spinous process* when the first saddle receives the first spinous process;
*a second tether coupled with the second saddle so as to surround the
second spinous process* when the second saddle receives the second spinous
process and the planar body expends between and *separates the spinous processes*.

57. (New) An implant for relieving pain associated with a spine,
comprising:
a unitary planar body having a continuous surface positionable between
two adjacent spinous processes, the planar body having a first end and a second
end;

the first end of the planar body defining a first saddle configured to receive the first spinous process;

the second end of the planar body defining a second saddle configured to receive the second spinous process;

a first fastener associated with the first saddle so as to retain the first spinous process in the first saddle;

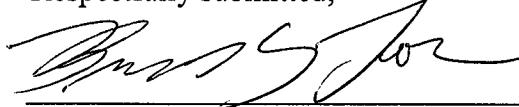
a second fastener associated with the second saddle so as to retain the second spinous process in the second saddle.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



Brad J. Loos
Reg. No. 51,968

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400 / Fax: 415-576-0300

BJL:nap

61196808 v1